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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

| | | |
|---------------------------------------|---|------------------------------|
| Angel Mendoza Lopez, |) | No. CV 09-0536 PHX-NVW (MEA) |
| |) | |
| Petitioner, |) | ORDER |
| |) | |
| v. |) | |
| |) | |
| Charles L. Ryan and Arizona Attorney) |) | |
| General, |) | |
| |) | |
| Respondents. |) | |
| |) | |

Pending before the court is the Report and Recommendation (“R&R”) of Magistrate Judge Aspey (Doc. # 10) regarding petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. # 1). The R&R recommends that the Petition be denied and dismissed with prejudice. The Magistrate Judge advised the parties that they had ten days to file objections to the R&R. (R&R at 13-14 (citing 28 U.S.C. § 636(b)). Petitioner filed objections on August 19, 2009. (Doc. # 11.)

The court has considered the objections and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). Except as noted in the following sentence, the court agrees with the Magistrate Judge's determinations, accepts the recommended decision within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner's objections. *See* 28 U.S.C. § 636(b)(1) (stating that the district court


“may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate”). The court declines to endorse the remarks in the R&R (Doc. # 10, p. 6, lines 4-6) concerning *Baldwin v. Reese*, 541 U.S. 27, 29 (2004), but this has no effect on the ultimate recommendation of the Magistrate Judge or the decision of this court.

Insofar as the Magistrate Judge also ruled on any non-dispositive matters, error may not be assigned to any defect in those rulings to the extent that an aggrieved party did not file a timely objection. Fed. R. Civ. P. 72(a) (“A party may serve and file objections to the order within 10 days after being served with a copy [of the magistrate’s order]. A party may not assign as error a defect in the order not timely objected to.”). The absence of a timely objection precludes later assignment of error in this court or in any higher court of the non-dispositive rulings of a magistrate judge. *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996); *Philipps v. GMC*, 289 F.3d 1117, 1120-21 (9th Cir. 2002).

IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate Judge (Doc. # 10) is accepted.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying and dismissing with prejudice Petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. # 1). The Clerk shall terminate this action.

DATED this 24th day of August, 2009.


Neil V. Wake
United States District Judge